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**HEALTH COMMISSION
CITY AND COUNTY OF SAN
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**MINUTES
JOINT CONFERENCE COMMITTEE MEETING
FOR LAGUNA HONDA HOSPITAL AND
REHABILITATION CENTER
April 11, 2023, 4:00 p.m.
101 Grove Street, Room 300
San Francisco, CA 94102 & via Webex**

1. CALL TO ORDER

Present: Commissioner Tessie Guillermo, Chair
Commissioner Laurie Green, M.D., Member

Excused: Commissioner Edward A. Chow, M.D., Member

Staff: Grant Colfax MD, Roland Pickens, Lucia Angel, Chuck Lamb, Elizabeth Schindler,
Geraldine Mariano, Jennifer Carton-Wade, Julie Cline, Lily Conover, Lisa Hoo MD, Nawzaneen
Talai, Neda Ratanawongsa MD, Sherri Soto, Terry Dentoni, Zoe Harris, Naveena Bobba MD

The meeting was called to order at 4:07pm.

2. APPROVAL OF MINUTES FOR MEETING OF MARCH 14, 2023

Public Comment:

Patrick Monette-Shaw provided verbal comment and submitted the following written summary:

These minutes are problematic. Compared to the Commission's 3/21 minutes — containing a four-page summary of Director Colfax's "Director's Report" — these minutes contain not one word summarizing Mr. Pickens' 3/14 "Executive Team" report, item 4. From these minutes the public isn't informed Pickens reported the second "90-Day Monitoring Survey" ended on 3/17/21, nor that Pickens reported orally 23 preliminary new deficiencies were cited during the survey. Creatively, Pickens evaded reporting the highest deficiency level received. State Operations Manual §7305.1.1 states "By no later than the 10th working day after the last day of the survey, the State must forward to the facility Form CMS-2567 and an initial letter." It's been 17 working and 23 calendar days since 3/17. Where's the Form 2567 I've requested twice? It must be released upon request! The minutes report a Nursing Home

Administrator search firm was hired 3/14/2023. This job was identified 6/22/2022, nine months ago.
Action taken: The Committee unanimously voted to approve the March 14, 2023 meeting minutes.

3. GENERAL PUBLIC COMMENT:

Public Comment:

Patrick Monette-Shaw provided verbal comment and submitted the following written summary:

An adage has it: “Silencing dissent and public participation comments in democratic government is a sign of weakness — not a sign of strength.” I am shocked by the temerity of Public Records staff at SFDPH who have repeatedly taken it upon themselves to unilaterally convert my “Immediate Disclosure Requests” to “Standard” records requests. This isn’t permitted under San Francisco’s Sunshine Ordinance. That’s beyond the authority of DPH’s Public Records staff and displays their hubris. CDPH’s State Operations Manual §7203.7), “State Monitoring” (including S.O.M. §7504), and “Reasonable Assurance” (S.O.M. §7321.3 requires SFDPH to release the Form 2567 upon request to members of the Public. On 3/23/2023 I submitted a records request to obtain this Form 2567 from the State survey Mr. Pickens indicated was completed on 3/17/23. No later than the 10th working day after the last day of the survey, the State must forward to the facility Form CMS-2567.

Michael Lyon stated that people being sent out of county is outrageous in a city in which people are working for corporations and have excessive wealth. LHH’s rooms can accommodate 3 people. LHH kept COVID-19 transmissions low during the pandemic. Current LHH residents are paying for years of LHH mismanagement. It is the DPH/LHH leadership and Health Commission’s duty to clean up these mistakes and protect LHH.

Dr. Teresa Palmer stated that the rules for testifying are so difficult that it is discouraging folks from making remote public comment.

Norman Dagelman stated that he is concerned about the loss of 120 rooms at LHH.

4. EXECUTIVE TEAM REPORT

Roland Pickens, Interim Chief Executive Officer, presented the item. He noted that LHH had received partial results from the recent survey, a 2567 for Emergency Preparedness. The QIE plans on sending the next root cause analysis to CMS on April 17. LHH leadership has a meeting scheduled on April 13 with CMS to discuss the Closure Plan finalization.

Public Comment:

Patrick Monette-Shaw provided verbal comment and submitted the following written summary:

During the Health Commission’s 4/4/23 meeting I raised this discrepancy. Pickens’ slide #4 today asserts LHH received 124 deficiencies during its first second “90-Day Monitoring Survey that ended 12/17/22. But the “Root Cause Analysis” HSAG report dated 1/31/23 regarding the first “90-Day Monitoring Survey” had listed 76 deficiencies — including 56 patient care “F-Tags”, plus 20 physical plant (facilities) deficiencies, not 124. The difference between 76 and 124 is 48. Why are Pickens and Colfax artificially inflating the deficiencies by 48? They appear to be comparing and contrasting the two surveys — a drop from 124 to 23 in the second “90-Day Monitoring Survey — to wrongly claim significant progress is being made. Why wasn’t the public informed in the first RCA report dated 1/31/23 about the other 48? Health Commissioner Chow stated concerns on 4/4/23 about the data discrepancy. The 6/22/2022 first “Mock Survey” had 123 deficiencies, not the 101 Pickens asserted.

Ann Colichidas, Gray Panthers, stated that the report didn’t mention people who are living in LHH. LHH belongs to the people of San Francisco. The DPH staff and consultants work there. We didn’t hear details on where people are going to go when transferred. Transfers kill.

Dr. Teresa Palmer is interested in hearing about the results of the April 13th meeting with CMS to discuss the revised closure plan. It is time to impress upon CMS that there is no safe way to close LHH and discharge its residents. She has not heard anything about preventing LHH residents who are evicted from dying. She would like to see the draft transfer plan. There is no reason for other skilled nursing facilities to accept complex LHH patients.

Michael Lyon stated that any attempt to transfer and discharge LHH patients would be a disaster.

Commissioner Comments:

Commissioner Green stated that the Commissioners share concerns that it would be a disaster to transfer LHH patients. The Commission is also very concerned about the total number of skilled nursing beds in San Francisco and the potential loss of 120 beds at LHH. She asked for further clarification regarding the doors being taken off and other measures related to the 120 rooms. Mr. Pickens stated that LHH is eager to bring a resolution to the closure plan so it can be finalized. He noted that although the plan is a requirement of the recertification process and continued CMS funding, no one wants it to every have to be implemented. At the April 13th meeting, LHH will reiterate its request to continue to pause in mandatory discharges. Regarding the 120 rooms, he stated that in order to apply for recertification, LHH must be in compliance with all current CMS regulations, which includes a maximum of two residents per room. However, LHH has preserved the ability to revert back to three per room. LHH kept the 120 beds on its license and measures such as door removal or caps on oxygen can be restored. He reiterated that LHH and DPH understands the importance of keeping the 120 beds and is in discussions with the City Attorney regarding whether applying for a waiver is appropriate at this time.

Commissioner Green asked if it is known whether other skilled nursing facilities have received such a waiver. Mr. Pickens stated that anecdotally he has heard that skilled nursing facilities in good standing with CMS have received such waivers.

Commissioner Green asked about staff morale in relation to the current CMS extended survey. Mr. Pickens stated that it is highly unusually for CMS to notify LHH 3 weeks after the end of survey that LHH is now on an extended survey. It is LHH's understanding that this survey is very focused. He noted that after almost a year since the decertification process, LHH staff are tired and weary; much has been asked of this group. Commissioner Guillermo expressed gratitude to LHH for all the hard work they have completed. She asked if it is known who will be attending the April 13 meeting from CMS and CDPH. Mr. Pickens stated that it is his understanding that it is the highest level of attendees from CMS and CDPH.

Commissioner Guillermo congratulated those who attended the California Association of Health Facilities Nursing Home Leader Academy. Mr. Pickens stated that this group will be so beneficial to LHH.

Director Colfax asked for clarification on different populations at LHH. Mr. Pickens stated that CMS gave LHH a pause on mandatory transfers for residents meeting skilled nursing service criteria. He noted that the CMS closure plan allows for residents to choose to leave. He added that there are approximately 50 residents that no longer meet skilled nursing level criteria. CMS has indicated that it would like LHH to being the process of investigating other placements for these individuals. Mr. Pickens noted that these are complex patients and there is a dearth of appropriate placements. He added that when CMS approves the closure plan, LHH must begin work on assessing these residents and attempting to find placements.

5. PRESENTATION: FY 22-23 FACILITY ASSESSMENT

Elizabeth Schindler, Director of Performance Improvement, presented the item.

Public Comment:

Patrick Monette-Shaw provided verbal comment and submitted the following written summary:

During the past couple months, Mr. Pickens claimed repeatedly to this Body LHH and SFDPH is doing

“everything we can” to keep and preserve LHH’s 120 beds. We believed him. Perhaps stupidly, with blind trust. Has a waiver request been submitted? It’s shocking, and extremely disheartening reading in this “Facility Assessment” report California’s Department of Health Care Access and Information (HCAI, formerly OSHPD) approved converting the three-person to two-person rooms by removing 120 beds, capping the medical gases, and permanently removing the bedroom doors. Be honest and transparent: Just how far along is LHH losing those beds permanently? More shocking, page 44 states “Emergency Power during emergencies for the new hospital ... should power fail ... was designed to minimum code — for cost savings 2010.” Sue the architects!

Worse, page 45 reports recertification scheduled for September 2022, but is way behind schedule. Will recertification and new admissions resume in 2023?

Ann Colichidas stated that it is good that it is still possible to keep the 120 beds but where is the waiver request. When the beds were first opened, they were state-of-the-art. We need those beds.

Dr. Teresa Palmer quoted 42 CFR §483.90(e)(3)(ii) which provides that survey agencies (CDPH) may permit and grant a variation on patients-per-room when facilities request in writing an exemption request that the variation to 42 CFR §483.90(e)(1)(i) “will not adversely affect residents’ health and safety.” She asked why LHH has not applied for a waiver and urged it to submit the waiver application.

Commissioner Comments:

Commissioner Green asked which of the Phase 3 regulations may be most challenging and easiest to implement. Mr. Pickens stated that the easiest policies to implement the new visitation policies during COVID outbreaks; CMS Phase 3 regulations stated that visitation should continue during such an outbreak. LHH will offer visitation in well ventilated indoor and outdoor areas. Another policy which will be easy to implement is the restriction of e-cigarette use only in designated smoking areas. Currently any e-cigarettes are in possession LHH staff. He noted that the most difficult policy to implement is the search of residents. It is no longer possible for there to be a search without LHH resident consent and LHH cannot deny future admission to individuals who use substance use issues that may predispose these individuals to try to bring contraband into the facility.

Commissioner Guillermo asked for clarification of how infection control can be managed by Quality Management and Nursing departments. Mr. Pickens stated that the QIE recommended making this change. Infection control has actually be moved from the Nursing Department to the Quality Management department. The infection control activities will be reported out through the QUAPI program.

Commissioner Guillermo asked if the implementations of the restraint policy, aligned with Phase 3 regulations, will be difficult. Mr. Pickens stated that LHH has made progress moving LHH towards a restraint-free environment. Every resident has been assessed who previously received restraint. He noted that there are currently 40-50 residents with this history. He added that CDPH has provided onsite technical assistance on this issue.

6. HIRING AND VACANCY REPORT

Sherri Suto, Principal HR Analyst, DPH Human Resources, presented the item.

Public Comment:

Patrick Monette-Shaw provided verbal comment and submitted the following written summary:

It’s unfortunate seeing various vacancy reports for April 2023 presented today the vacancy rate for RN positions increased by 1.5% over March to a total of 12.9%, with 27.5 FTE vacancies, excluding 4 Nurse Managers, 2 Nursing Supervisors, and 11 LVN’s. LHH’s 12.3%, overall vacancy rate involves 179.7 vacancies across all job classifications. Overall vacancies include 1.4 FTE Senior Physicians, 2.0 (Junior) Physicians, 1 Psychologist, and 1 Neuropsychologist. Apparently, the new Nursing Home Administrator

and Assistant Nursing Home Administrator positions remain unfilled, although it was good hearing Mr. Pickens just say offers for the NHA or AHNA positions may be extended in the first week of May to onboard them. Observers are wondering whether the severe and increasing vacancies problem is because of a reluctance of job candidates to come work at a SNF lacking a licensed NHA in a facility run by managers mistakenly believing they're running an acute-care hospital.

Dr. Teresa Palmer is worried about certified nursing home administrator and the assistant nursing home administrator, who can set the tone for all staff, and can stand up to outside interference with admission policies, which is one issue that has caused trouble for LHH. She would like to hear more about the hiring process of these very important staff.

Commissioner Comments:

Commissioner Green asked if LHH continues to transition some charge nurses to nurse manager positions. Mr. Pickens stated that some charge nurses have been made interim nurse managers and there is one nursing supervisor who has agreed to step down to fill a nursing manager position. He noted that registry staff are filling many regular nursing positions.

Commissioner Green asked if there is an update on hiring the nursing home administrator. Mr. Pickens stated that LHH will be doing initial interviews for the group of candidates. LHH hopes to have an offer extended by the second week in May, depending on the quality of the applicants.

7. FINANCE UPDATE

Lily Conover, Chief Financial Officer, presented the item.

Public Comment:

Patrick Monette-Shaw provided verbal comment and submitted the following written summary:

It's good seeing this Q2 "Finance Update" through 12/31/22. The Q1 "Finance Update" through 9/30/22 reported LHH had a "Medi-Cal" shortfall of \$23.93 million through September. Today's Update through 12/31/22 shows a "Medi-Cal" shortfall of \$23.74 million. Is the \$23.74 million shortfall a cumulative total for the full current Fiscal-Year-to-Date, or is the \$23.74 million just the amount of Medi-Cal revenue lost between 10/1/22 and 12/31/22? If it is not cumulative Fiscal-Year-to-Date, does that mean LHH has lost a combined total of \$47.4 million year to date? This report should explicitly state it's Fiscal-Year-to-Date or data for just one quarter. The Health Commission has a ministerial duty and fiduciary duty to all San Franciscans to report accurately the total Medi-Cal revenue shortfall since LHH was decertified in April 2022. After all, we've been told LHH relies on \$200 million in Medicare reimbursement annually. It can't only be \$23.74 million.

Commissioner Comments:

Commissioner Green asked if CMS compensation for care is impacted for the group of residents assessed to no longer need skilled nursing level of care. Mr. Pickens that level of compensation has not been adjusted based on the most recent assessment of these residents. He noted that part of continued CMS funding is LHH showing that it is doing its due diligence for attempting to find appropriate placements for this group.

8. REGULATORY AFFAIRS REPORT

Geraldine Mariano, Director of Regulatory Affairs, presented the item.

Public Comment:

Patrick Monette-Shaw provided verbal comment and submitted the following written summary:

- My chart Mr. Morewitz is displaying is from my new article I asked him to send you illustrates.
- LHH received only 10 citations in the 7/2019 survey of LHH's sexual abuse scandal.

- The near-fatal patient fentanyl overdoses that happened in 7/2022 triggered eight successive survey inspections between 10/21 and 4/13/2022. LHH racked up a total of 22 citations leading to LHH's decertification on 4/13/ 2022.
- LHH's first *90-Day Monitoring Survey* on 11/2022 received a whopping 56 patient-care related citation violations, plus 20 "*physical plant*" (facility) violations, for a total of 76 violations. In total, LHH racked up 118 patient care citations in those intervening three years and four months plus 20 "physical plant" citations for a total of 138 citations across the 12 formal State survey inspections. Add in the 123 "*Mock Survey*" deficiencies in 6/2022, which totals 261 deficiencies in just three years. The 23 new deficiencies total 284.

Commissioner Comments:

Commissioner Guillermo thanked Ms. Mariano for the report.

9. LAGUNA HONDA HOSPITAL POLICIES

Carmen Trinh, Data Analytics Manager, presented the item.

Public Comment:

Patrick Monette-Shaw provided verbal comment and submitted the following written summary:

It's disappointing learning LHH's "Restorative Nursing Care" policy isn't presented for your approval. As a reminder, the Nursing and Rehab Services departments quibbled over "ownership" of the Restorative program. The first RCA report involving the "Resident Rights and Freedom From Harm" category, Root Cause 8: "Lack of formalized restorative nursing program," claimed a "Gap Analysis" would be completed by 1/25/23 and a "Scope of Services" document by 2/8/23. Both documents, comically, were essentially different versions of a single document, merely rehashing a pathetic PowerPoint presentation LHH created in 2018. Neither document contained anything resembling a scientific gap analysis or a Scope of Services report, as if written by someone without analytical skills. The QIE's 4/10/23 "Monitoring Report" noted 38 (49%) of report "deliverables" needed revision to meet the "Action Plan's" intent, failing to match requested "Action Plans." The two Restorative documents are prime examples. Ask Jennifer Carton-Wade: "Why this failure?"

Commissioner Comments:

Commissioner Green noted that enteral tube feeding can be complicated. She asked if the policy requires a huge change of practice for staff and are there wound care staff. Mr. Pickens stated that the policy does represent a major change and is the result of findings from the last survey, which cited wound care and nutrition QAPI programs. The ZSFG wound care specialist has been brought to LHH to help develop LHH procedures and protocols. The new policy reflects new learnings and guidance from the last year. He added that LHH is ensuring that it will have its own wound care expertise.

Action taken: The LHH JCC unanimously recommended that the Health Commission approve the following:

April 2023

<u>Item</u>	<u>Scope</u>	<u>Policy No.</u>	<u>Policy Title</u>
1	Facility-wide	25-10	Use of Psychotropic Medications
2	Facility-wide	31-01	Wireless Temperature Monitoring System
3	Facility Services	LS-2	Portable Fire Extinguisher Inspection and Maintenance
4	Nursing	C 3.0	Obtaining Nursing Forms, Medical Records Appendix 1: Nursing Documentation Forms, Medical Records, and Chart
	Order		
5	Nursing	D1 2.0	Resident's Activities of Daily Living

6	Nursing	E 2.0	Assisting Residents During Mealtime
7	Nursing	E 5.0	Enteral Tube Feeding Management
8	Nursing	J 1.0	Medication Administration
9	Nursing	E 6.0	Total Parenteral Nutrition
10	Nursing	D5 3.0	Cast Care

10. CLOSED SESSION

- A) Public comments on all matters pertaining to the Closed Session. (San Francisco Administrative Code Section 67.15).

Public Comment:

Patrick Monette-Shaw provided verbal comment and submitted the following written summary:

Entering Closed Session, remember an adage: “Silencing dissent and public participation comments in democratic government is a sign of weakness — not a sign of strength.” During Closed Session, you should reconsider revising your three-tiered structure for taking public comment. You talk a good game around “equity,” but three-tiered public comment period is anything ****but**** “equitable.” Folks having a disability but may not want being pigeon-hole “outed” as being “disabled” are coerced to self-identify as such in order to qualify for a “reasonable accommodation.” That’s the opposite of “equitable.” And discriminatory. This Body should have gotten the message about silencing dissent by restricting public comments to a 20-minute restricted time limit for people who choose not to have the artificial label of “disabled” thrust upon them. Republicans in Nashville set out to punish, silence and humiliate the Tennessee Three. If your goal is to silence public comment, you’re no better.

- B) Vote on whether to hold a Closed Session.

Action Taken: The LHH JCC voted unanimously to hold a closed session.

- C) Closed Session Pursuant to Evidence Code Sections 1156, 1156.1, 1157, 1157.5, 1157.6, and 1157.7; Health and Safety Code Section 1461; San Francisco Administrative Code Sections 67.5, 67.8, 67.8-1, and 67.10; and California Constitution, Article I, Section 1.

CONSIDERATION OF MEDICAL STAFF CREDENTIALING MATTERS

CONSIDERATION OF MEDICAL QUALITY IMPROVEMENT

CONSIDERATION OF PERFORMANCE IMPROVEMENT AND PATIENT SAFETY REPORTS AND PEER REVIEWS

QUALITY IMPROVEMENT MEDICARE RECERTIFICATION

UPDATE AND QUALITY IMPROVEMENT CLOSURE PLAN UPDATE

RECONVENE IN OPEN SESSION

1. Discussion and Vote to elect whether to disclose any portion of the closed session discussion that is not confidential under Federal or State law, The Charter, or Non-Waivable Privilege (San Francisco Administrative Code Section 67.12(a).) (Action item)

2. Possible report on action taken in closed session (Government Code Sections 54957.1(a) and 54957.7(b) and San Francisco Administrative Code Section 67.12(b).

11. POSSIBLE DISCLOSURE OF CLOSED SESSION INFORMATION

Action Taken: The Committee unanimously voted to not disclose discussions held in closed session.

12. ADJOURNMENT

The meeting was adjourned at 6:20pm.